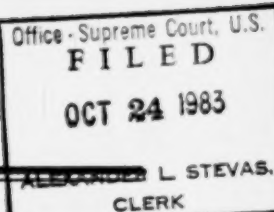


No. 83-489



IN THE
Supreme Court of the United States

OCTOBER TERM, 1983

LEON G. KAZANZAS,

Petitioner,

v.

WALT DISNEY WORLD CO.,
a Delaware corporation,

Respondent.

On Petition For Writ Of Certiorari To The United States
Court Of Appeals For The Eleventh Circuit

**BRIEF IN OPPOSITION
TO PETITION FOR CERTIORARI**

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October 24, 1983

LIST OF AFFILIATE CORPORATIONS

WALT DISNEY WORLD CO. is a wholly owned subsidiary of Walt Disney productions. Following is a complete list of affiliated companies.

All except those marked with an asterisk are wholly owned subsidiaries.

Buena Vista Distribution Co., Inc.

and the following divisions of such company:

Buena Vista Construction Co.

Disneyland-Vista Records

MacGlashan Enterprises

Magic Kingdom Club

United National Operating Co.

Vista Advertising

Walt Disney Attractions

Walt Disney Distributing Co.

WED Enterprises

Buena Vista International, Inc.

Buena Vista Realty, Inc.

Canasa Trading Corporation

Celebrities, Inc.

Club 33

Compass Rose Corporation

* Creazioni Walt Disney S.A.I.

The Disney Channel

Disneyarea, Inc.

Disneyland Development Corp.

Disneyland, Inc. (California)
 Disneyland, Inc. (Florida)
 Lake Buena Vista Communities, Inc.
 Madeira Land Company, Inc.
 Magic Kingdom, Inc.
 Musique Walt Disney Du Canada Limitee
 (Walt Disney Music of Canada Limited)
 Ranch and Grove Holding Corp.
 Reedy Creek Utilities Co., Inc.
 Vista Communications, Inc.
 and the following partnership in which
 such company is a general partner:
 Vista-United Telecommunications
 Vista Insurance Services, Inc.
 Walt Disney Educational Media Company
 Walt Disney Enterprises of Japan Ltd.
 Walt Disney Incorporated
 Walt Disney Iberica, S.A.
 Walt Disney Music Company
 Walt Disney Pictures
 and the following division of such company:
 Walt Disney Television
 Walt Disney Portuguesa Criacoes Artisticas Lda.
 Walt Disney Production
 and the following divisions of such company:
 Disneyland

MAPO

Theme Fabrication Co.

Walt Disney Productions A/B

Walt Disney Productions A/S Danmark

* Walt Disney Productions (Benelux) S.A.

* Walt Disney Productions (France) S.A.

Walt Disney Productions (Germany) GMBH

Walt Disney Productions International Finance N.V.

Walt Disney Productions Japan, Ltd.

* Walt Disney Productions Limited

* Walt Disney Productions Pty. Limited

Walt Disney Telecommunications and Non-Theatrical
Company

Walt Disney Travel Co., Inc.

Walt Disney World Co.

WED Transportation Systems, Inc.

Wonderland Music Company, Inc.

World Showcase, Inc.

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STATEMENT OF THE CASE

The Eleventh Circuit considered only the issue of the statute of limitations in deciding this case. On that issue the district court ruled that the statute of limitations runs from the filing of the 180 day charge. 518 F.Supp. at 2984. The district court did not rule that the statute of limitations was tolled as Kazanzas argues. The Eleventh Circuit disagreed, ruling that the statute of limitations runs from the date when the cause of action accrues.

The Eleventh Circuit next considered whether the facts of this case supported equitable tolling of the statute of limitations and concluded they did not. Although Walt Disney World Co. had not posted the approved ADEA

poster, the district court found that, at the time of his discharge, Kazanzas knew that he could not be discriminated against because of his age and also that as a management level employee he had read the collective bargaining contract which stated there would be no discrimination based on age as provided in federal and state legislation. 518 F.Supp. at 293. Finally, the district court noted that at the time of his discharge, Kazanzas was aware of facts which would reasonably lead him to conclude that his discharge was based on age. 518 F.Supp. at 293.

The Eleventh Circuit ruled that Kazanzas was not entitled to any equitable relief from the statute of limitations based on these facts, and reversed the judgment of the district court.

REASONS FOR DENYING THE WRIT

- I. The Decision Of The Court Of Appeals Does Not Conflict With The Decision In *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 102 S.Ct. 1127 (1982).

The only issue decided in *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 102 S.Ct. 1127 (1982) was whether the 180 day filing provision of Title VII was jurisdictional. The Court decided it was not.

This case does not involve any claim that the filing requirements of the ADEA are jurisdictional. The only issues decided by the Eleventh Circuit were the commencement date of the running of the limitations period and whether, under the facts of this case, Kazanzas was entitled to any tolling of that period.

Unlike Title VII, the ADEA has a separate federal statute of limitations in addition to the time limits for seeking administrative relief. That statute, 29 U.S.C. § 255, was the subject of the decision in *Unexcelled*

Chemical Corporation v. United States, 345 U.S. 59, 73 S.Ct. 580, 97 L.Ed. 821 (1953), which addressed the relationship between administrative relief and the statute of limitations. In *Unexcelled*, the Court ruled that the limitations period of 29 U.S.C. § 255 runs from the date of the allegedly unlawful act, rejecting the argument that the statute only begins to run after the case has been administratively determined.

The ruling of the district court in this case that the limitations of 29 U.S.C. § 255 runs from the filing of the 180 day charge was directly contrary to the decision in *Unexcelled*. By reversing that ruling, the Eleventh Circuit conformed to the decision in *Unexcelled* and did not create any conflict with other decisions of this Court.

The Eleventh Circuit did not rule that the statute of limitations could not be tolled. Indeed, the court specifically considered whether the facts of the case warranted tolling of the two year limitations period, but concluded that they did not. 704 F.2d at 1529-1532.

There is no conflict between the decision of the Eleventh Circuit and any decision of this Court.

II. The Decision Of The Court Of Appeals Does Not Conflict With Any Decision Of Other Courts Of Appeals.

The cases relied upon by Kazanzas to establish conflict with the instant decision are not in conflict at all. In this case, the Eleventh Circuit reviewed the application of the statute of limitations, not the 180 day administrative filing period. None of the cases cited by Kazanzas involves the statute of limitations.

The Eleventh Circuit pointed out in its opinion that while the same factors may require tolling of both the 180 day provision and the statute of limitations, the two

periods must be analyzed separately because certain factors may not be applicable to both. 704 F.2d at 1529.

In this case, for instance, Kazanzas claimed he was entitled to equitable tolling because he didn't know about the limitations period. 704 F.2d at 1530. He argued that Disney's failure to post the statutory notice which contained notice of the 180 day administrative filing requirement contributed to his ignorance and required tolling of the 180 day provision. The district court agreed and the Eleventh Circuit did not review that ruling because it was unnecessary in light of its decision on the statute of limitations. 704 F.2d at 1528.

The Eleventh Circuit, however, pointed out that the required notice is silent with respect to the substantially longer two year limitations period, and that the district court had found that Kazanzas had actual knowledge at the time of his discharge that he was not to be discriminated against because of age. On those facts, the Eleventh Circuit concluded that the rationale for tolling the 180 day requirement was unpersuasive when applied to the more traditional two year limitations period. 704 F.2d at 1530.

Traditionally, ignorance of legal rights does not toll limitations periods. 704 F.2d at 1530. Some act of fraud, misrepresentation or concealment by the defendant is generally necessary to equitably extend the time in which a person may assert his rights. In this case, the district court and the Eleventh Circuit agreed that those elements were absent from this case. 518 F.Supp. at 294, 704 F.2d at 1532.

While this is apparently the first decision from a court of appeals barring an ADEA action because of the statute of limitations, it was not decided on any novel legal theo-

ry. Rather, the Eleventh Circuit considered the traditional factors for tolling limitations periods and ruled that the facts of this case did not warrant any equitable relief.

Even when considering tolling the 180 day filing requirements, the circuit courts have uniformly limited the suspension of time to the point when the employee acquires actual knowledge of his ADEA rights. *E.g.*, *Charlier v. S.C. Johnson & Son, Inc.*, 556 F.2d 761 (5th Cir. 1977); *Bonham v. Dresser Industries, Inc.*, 569 F.2d 187 (3d Cir. 1978); *Kephart v. Institute of Gas Technology*, 581 F.2d 1287 (7th Cir. 1978). An employee's ADEA right is the right to be free from age discrimination. The district court found that Kazanzas knew he could not be discriminated against because of his age at the time of his discharge. 518 F.Supp. at 293. Consequently, there was no basis for tolling the limitation period.

III. The Decision Of The Court Of Appeals Was Correct And Need Not Be Reviewed

The basic argument of the third part of Kazanzas' petition is that whenever the 180 day requirement is tolled, the statute of limitations is tolled, and that because the district court tolled the 180 day requirement in this case, the two year period should also be suspended.

As the Eleventh Circuit noted, the two time periods must be considered separately. Facts which might extend the short period for seeking administrative relief do not necessarily require extension of the two year statute of limitations. 704 F.2d at 1529.

Moreover, in this case, the Eleventh Circuit did not agree that the facts were even sufficient to provide relief from the 180 day period. The court expressly declined review of that issue in light of the decision on the statute of limitations. 704 F.2d at 1528.

Contrary to Kazanzas' assertion at page 15 of the petition, the Eleventh Circuit did not assume that no facts would justify tolling the statute of limitations. The Court of Appeals acknowledged that, in a proper case, the statute could be tolled. 704 F.2d at 1529.

The decision in this case does not upset any well-established principles. The decisions holding the same principles governing statutes of limitations govern the 180 day requirement were addressed to the now settled dispute of whether the 180 day deadline for filing an administrative notice was a jurisdictional requirement or a limitations period. There is no case holding that just because the 180 day period is extended, the statute of limitations is also extended.

The Eleventh Circuit did not reevaluate the evidence or alter the district court's findings of fact. It was the district court that noted, "At the time of his discharge, the plaintiff knew that he could not be discriminated against because of his age." 518 F.Supp. at 283. It was also the district court which found no misrepresentation by Disney. 518 F.Supp. at 294. The Eleventh Circuit relied on these findings to conclude that Kazanzas was not entitled to relief from the statute of limitations.

Finally, the Eleventh Circuit has done no violence to the remedial nature of the ADEA because it has upheld the legislative limitation on the time in which an action may be brought. The decision in this case is analogous to the one in *Delaware State College v. Ricks*, 449 U.S. 250, 101 S.Ct. 498, 66 L.Ed.2d 431 (1980), in which the Court ruled that Ricks' Title VII and § 1981 claims were barred by limitations. The Court said:

The limitations periods, while guaranteeing the protection of the civil rights laws to those who promptly assert their rights, also protect employers

from the burden of defending claims arising from employment decisions that are long past. 101 S.Ct. at 503.

The decision by the Eleventh Circuit also responds to the criticism the district court voiced in its decision:

The present case is a classic example of one problem created for trial judges and litigants once the process of judicial modification of statutory limitations on statutory rights is set in motion—certainty in the law is all but lost. 518 F.Supp. at 294.

If Kazanzas' plea of ignorance of the time periods had been accepted as sufficient to toll the limitations period, the two year statute of limitations would be effectively repealed, and employers would have the impossible task of reconstructing employment decisions years after those decisions had been made.

The decision of the Eleventh Circuit in this case applied traditional principles to the issue of equitable tolling of the statute of limitations and concluded that Kazanzas had presented no facts to warrant relief from the limitations period.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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